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In re Application of : DECISION ON
Baum et al :
Application No.: 09/831,621 :
PCT No.: PCT/US99/26788 : PETITION UNDER
Int. Filing Date: 10 November 1999 :
Priority Date: 10 November 1998 :
Attorney's Docket No.: 98.664-B :
For: Novel DNAs and Polypeptides : 37 CFR 1.181

This decision is in response to the "REQUEST TO WITHDRAW OF ABANDONMENT" filed 20 February 2003, requesting acceptance of a copy of the executed Declaration purportedly filed in the USPTO on 17 October 2001. Applicant has submitted, inter alia, a copy of the 17 October 2001 itemized postcard receipt.

BACKGROUND

On 20 July 2006, this Office mailed a decision that dismissed the petition filed under 37 CFR 1.137(b) on 24 January 2006. The decision set a two month time period for respond.

In the interim, a petition filed on 20 February 2003 has been matched with the aforementioned application. Applicant submitted this petition indicating that an executed declaration was filed on October 17, 2001 and that the filed petition on 20 February 2003 included a copy of the declaration submission on October 17, 2001.

DISCUSSION

Applicant's present petition accompanied by a copy of the following documents, filed purportedly with the USPTO as indicated in the postcard:

- (1) Executed Declaration
- (2) Transmittal Letter
- (3) Copy of Notice of Missing Requirements

The postcard lists the above items and but is not date stamped by the USPTO.

MPEP 503 provides:

If a receipt for any item (e.g., paper or fee) filed in the USPTO is desired, it may be obtained by enclosing with the paper a self-addressed postcard specifically identifying the item. To ensure the receipt of return receipt postcards, users must either: (A) purchase already stamped postcards from the United States Postal Service (USPS) or affix postage stamps to their postcards; or (B) if a postage meter is used, ensure that the meter postmark does not show the date. Any return receipt postcard containing a dated meter postmark may not be delivered by the USPS to the address provided on the postcard. Users are reminded that they are solely responsible for placing the proper postage on self-addressed postcards that are submitted to the USPTO for the purpose of obtaining a receipt for correspondence being filed in the USPTO. Users should check with the USPS regarding postage and what size cards are acceptable to the USPS. Any return receipt postcard that does not contain sufficient postage or is not acceptable may not be delivered by the USPS to the address provided on the postcard, and, if returned to the USPTO, may be discarded.

The USPTO will stamp the receipt date on the postcard and place it in the outgoing mail. A postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the **date stamped** thereon by the USPTO.

The person receiving the item(s) in the USPTO will check the listing on the postcard against the item(s) being filed to be sure they are properly identified and that all the items listed on the postcard are presently being submitted to the USPTO. If any of the items listed on the postcard are not being submitted to the USPTO, those items will be crossed off and the postcard initialed by the person receiving the items.

Upon return of a postcard receipt from the USPTO, the postcard receipt should be promptly reviewed by the person who filed the items to ensure that every item specifically denoted on the postcard was received by the USPTO. If the postcard receipt has been annotated to indicate that a particular item denoted on the postcard was not received by the USPTO, the postcard receipt will not serve as *prima facie* evidence of receipt of that item in the USPTO.

Applicant's postcard is not accepted as *prima facie* that an executed Declaration was deposited with the U.S. Patent and Trademark Office on 17 October 2001 because the copy of the itemized postcard submitted is not date stamped by the USPTO.

DECISION

The petition under 37 CFR 1.181 is **DISMISSED**, without prejudice.

Consequently, the application remains abandoned as indicated in the decision mailed on 20 July 2006.

If reconsideration on the merits of this petition is desired, a proper response must be filed within TWO (2) MONTHS from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.181." Extensions of time may be obtained under 37 CFR 1.136(a).

Any further correspondence with respect to this matter should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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